

REMARKS

In response to the Office Action mailed July 15, 2004, Applicant submits the following remarks. Claims 1-24 are now pending, and stand rejected as being obvious over various combinations of the following references:

Palm: The Palm patent concerns an audio player that is connected through a network so as to provide multiple song files to a user through a hierarchy of menu screens. The user can select and play back songs stored on different machines, from various categories and radio stations.

Fritsch: The Fritsch patent concerns a system for downloading for purchase music files. The user can search for songs such as by reviewing categories.

Rasmussen: The Rasmussen patent concerns a website at which users can vote on the submissions of other users. The illustrative embodiment is a forum for voting on jokes, but the Rasmussen patent clearly has applicability to other submissions such as music input by users. When casting a vote on a user's submission, the voter's account is debited and the votee's account is credited. Popular submissions will garner many votes and the resulting credits can be used for various benefits.

Ghias: The Ghias patent concerns a method in which voice clips are input by a microphone and matched electronically, using a pitch-change-analyzing search-engine, to locate songs in a database. The songs are either identified or played back upon determining a match.

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Section 103 Rejection of Claims 6-11

With regard to claims 6-11, the Examiner rejects them as being unpatentable over Palm in view of Rasmussen. According to the Examiner, Palm teaches each of the elements recited in claim 6, except step (d), “awarding a benefit to the user for the response provided that at least one predetermined criterion is satisfied.” For this feature, the Examiner relies upon secondary reference Rasmussen and contends that persons of ordinary skill in the art would have been motivated to modify Palm in view of Rasmussen in order to “encourage users participation and contribution of material and attracting more users to visit the web site for sales increasing.” However, the Examiner’s reliance on Rasmussen is misplaced.

In **claim 6**, a user can download and play a voice clip and selectively provide a response which includes a song name or artist’s name. According to step 6(d), that user is awarded a benefit for providing a response that matches predetermined criteria. In contrast, the user in Rasmussen is charged for casting a vote on another user’s submission by having his or her account debited. Thus, even assuming that a mere vote could correspond to the claimed response which includes a song name or an artist’s name --and Applicant does not concede that such correspondence is correct, the proposed combination of Palm with Rasmussen would be substantially different. Consequently, the rejection over the combination of Palm modified in view of Rasmussen should be withdrawn.

Aside from the failure of the proposed combination with Rasmussen to result in a method that meets the limitations of claim 6, there are many other deficiencies in the teachings of Palm relative to claim 6 that are not acknowledged in the outstanding office action.

For example, there are no “voice-clip authors” as recited in step 6(a) and so there can be no playing of the voice clip at the client machine as recited in step 6(b). Also, Palm never even hints at step 6(c), “selectively providing a response . . . including a song name or artist’s name”

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because there are no “responses” in Palm that identify the song or author of the voice clip. At most, further requests for further songs are provided from a client machine, but these are unrelated to any voice clip that has been downloaded to the client machine.

Moreover, Palm never causes an electronic notification to be sent to a voice clip author, as recited in step 6(e). The Examiner cites to paragraph [0006] in support of his contention that a corresponding notification is taught by Palm, but that is not a fair reading of Palm. That paragraph teaches, quite to the contrary, that protocols and formats must be established “before the transmission of the actual media.” The electronic notification of step 6(e) is after a series of interactions including downloading to a client machine, playback at the client machine, and the providing of a response to the web server. The protocol and format establishment of Palm precedes all of the steps of claim 6. No where else does Palm describe notifications as recited in claim.

Neither does Rasmussen provide responses as recited in step 6(c) that identify a song name or an artist’s name. Instead, there is a mere vote. Nor does Rasmussen provide notifications of the type recited in step 6(e). The only notifications are e-mail messages sent by one user to another (see 6:58-65) rather than a notification in response to a predetermined criteria.

With particular regard to **claim 7**, the Examiner has not separately considered a feature of this claim which departs further from the proposed combination of references in reciting that the “at least one predetermined criterion is that plural responses from other users concerning the same voice clip match within prescribed parameters.” As acknowledged by the Examiner, Palm does not award benefits to users at all. Rasmussen permits voting which results in a benefit (credit) to the votee (and a detriment in the form of a debit to the voter), but Rasmussen teaches one vote being cast for each response and never suggests that a criterion for awarding a benefit be that plural votes are received before such an award. The criterion of plural responses that match within prescribed parameters is a substantial difference over the proposed combination because it prevents

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notifications from being sent out prematurely. Thus if two users identify the song as “Jumping Jack Flash” and “Brown Eyed Girl,” respectively, a notification would typically not be sent because the responses to the voice clip do not match within prescribed parameters (they are different songs). A third user identifying the song as “Jumping Jack Flash,” however, would result in an electronic notification. The proposed combination does not disclose or suggest this methodology, let alone electronic notifications of this type, and so the further features of claim 7 are submitted to define patentably over the proposed combination.

For the foregoing reasons, claims 6, 7 and the other dependent claims in this group (claims 8-11) are submitted to be patentable over the cited references.

Section 103 Rejection of Claims 1-5 and 12-24

Claims 1-5 and 12-24 stand rejected as being obvious over Fritsch in view of Rasmussen and in further view of Ghias et al. Applicant respectfully traverses this rejection.

Applicants agree with the Examiner that it would be within the ordinary skill in the art to modify Fritsch to include the microphone-based interface of Ghias in order to permit songs to be selected by entering a voice clip rather than the input methodologies noted by Fritsch for selecting a song (step 1(a)). However, it must be recognized that Fritsch delivers to a user who has input a song request the song that was requested. That user’s input (the voice clip) is not delivered to another user. Thus, in accordance with Fritsch a user navigates a cursor to select a song, and that navigation/selection is never provided to another user. The proposed modification in view of Ghias would permit the user to select a song using a voice clip sung into a microphone, but there is no reason or suggestion that the song selection now be sent to some other user merely because it was entered into a microphone rather than being selected using a cursor.

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Thus, even were a voice clip entered via a microphone, that voice clip would not be available to other users of the Fritsch system, and certainly there is no basis to conclude that such voice-clip song selections would be made available “to a human visitor to the server” as recited in step 1(d) or that such persons would be permitted “to post the name of the song to the server” as recited in step 1(e). For this reason, the proposed further modification in view of Rasmussen is merely hindsight-reconstruction of the claimed invention.

The Examiner incorrectly contends that one of skill in the art would be motivated to modify Fritsch in view of Ghias in view of Rasmussen to “encourage users participation and contribution of material and attracting more users to visit the web site for sales increasing.” Claim 1(e) recites the step of “permitting multiple human visitors to post the name of the song to the server.” It is not understood how “permitting multiple human visitors to post the name of a song” would increase sales. The Examiner does not address the fact that multiple visitors could post different names for the song and as a result customers could end up confused.

In any event, Rasmussen does not teach or suggest the receipt “at the client machine of an electronic notification from the server that the song has been identified,” as recited in step 1(f), because all Rasmussen teaches is a simple vote or complaint on another user’s submission. Consequently, all that Rasmussen can impart to Fritsch is a simple vote or complaint and not this further step.

Finally, with regard to steps (b) and (c) of claim 1, the Examiner cites to Fritsch as teaching these steps. However, these particular steps relate to the provision of the voice clip from a client machine to a server and the provision of further information to the server and not to the delivery of songs *to* the client machine. Steps (b) and (c) recite communications in the opposite direction than that of Fritsch because those steps concern the transmission of an input voice clip from the client machine to the server. By way of analogy, this is the song selection step described by Fritsch and

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not the downloading of songs. Accordingly, the Examiner's reliance on Fritsch as teaching these steps is incorrect.

For all of these reasons, Applicant submits that claim 1 defines patentably over the proposed combination of references.

With regard to claim 12, claim 12 is submitted to be allowable over the proposed combination of references because it includes each of the features of claim 1. In addition, claim 12 is more particularly concerned with steps that operate using the microphone of a "telephone" and which include the input of "first user identification information" into the telephone and receipt of notification "in response to receipt of the first user identification information." These further features are not disclosed or suggested in any of the cited documents, and so independent claim 12 cannot be rendered obvious by the proposed combination of references.

With regard to independent claim 21, it too defines over the proposed combination in reciting the presentation "for download and playback by additional human users among the community of users the voice clip received from the first user," as recited in step 21(b). A voice clip, if utilized by modifying Fritsch in view of Ghias, is never sent to other users in a community of users. Consequently, there is no ability for other human users to post any data relating to the voice clip as recited in step 21(c), whether it is the name of the song or a simple vote. Finally, there are no notifications as recited in step 21(d). Accordingly, claim 21 cannot be rendered obvious by the proposed combination of references.

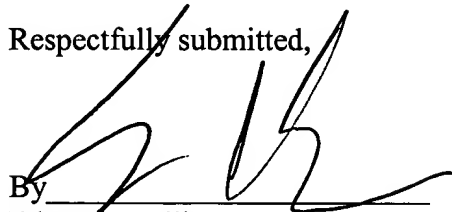
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The undersigned can be contacted directly if the Examiner believes that this might expedite allowance of this case.

Dated: September 9, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'EJ Ellis', written over a horizontal line.

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